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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MINNEAPOLIS, MN 55402-0903				
EXAMINER				
BLIZZARD, CHRISTOPHER JAMES				
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3771				
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06/23/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,933

Applicant(s)

KREUTZMANN ET AL.

Examiner

CHRISTOPHER BLIZZARD

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/1/10 has been entered.
2. As directed claims 1 and 4 were amended and no claims were added or cancelled. Therefore this application has claims 1-12 pending.

Specification

3. The amendment filed 3/1/10 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "wherein said member is removable to expose the at least one channel" found in claim 1.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Regarding claims 1-9, the limitation "wherein said member is removable to expose the at least one channel" found in claim 1 renders the claims indefinite as it is unclear how the channel can be exposed upon the removal of the member when the channel is defined in part by the member.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 5, 10 and 12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pitcher (6,129,080).
9. Regarding claims 1 and 10, Pitcher discloses an inhalation therapy device comprising: a nebulising chamber (fig. 1 around #10), an aerosol generator, which is arranged such that it releases an aerosol into the nebulising chamber (column 2, lines 45-47), and which comprises a nozzle element (3, 6) and at least one channel extending between the nozzle element and a member (8) (fig. 1), wherein the location of the channel would be exposed due to the removal of the member (8) (column 2, lines 28-29). The nozzle element is comprised of a first part (3 or 6) attached to a second part (6 or 3) made of different materials (fig. 1, note crosshatching difference). Figure 1

of Pitcher clearly shows the first and second parts being made of different materials, it is inherent that one part will have different resilience from the other part. Even if Pitcher's first and second parts do not have different resilience, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first part (3) out of a more resilient material so that it will be easily cleanable without a danger of breakage.

10. Regarding claim 2, Pitcher discloses the device wherein the first part (3) of the nozzle element has a cross-section which tapers further than that of the second part (6) (fig. 1).

11. Regarding claims 5 and 12, Pitcher discloses the device wherein the first part (3) of the nozzle contains a nozzle outlet (fig. 1).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3, 4, 6-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitcher (6,129,080).

14. Regarding claims 3 and 11, Pitcher discloses the device except for the material which the first part is made of being silicone rubber or a thermoplastic elastomer. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the first part of the nozzle of Pitcher out of silicone rubber or a thermoplastic

elastomer to provide the advantages of durability and ability to clean easily since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

15. Regarding claim 4, Pitcher discloses the claimed device except with first and second part of the nozzle element being a two-component structure but does not disclose the first part (3) being molded on the second part (6). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have the first part being molded on the second part since molding parts together is well known in the art and it appears the modified nozzle element of Pitcher would perform equally well with molded on parts.

16. Regarding claims 6-8, Pitcher discloses the claimed invention except for the nozzle having a third part containing the nozzle outlet and that this third part tapers further than the first part of the nozzle. However it would have been obvious to one of ordinary skill in the art at the time of the invention to produce nozzle end of the first part (3) as a separate third part in order to provide the advantage of being able to remove and clean the part of the nozzle that is most necessary to foul, since it has been held that making integral components separable for the purpose of accessibility is an obvious design choice. *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)

17. Regarding claim 9, the modified Pitcher teaches the claimed device above except for the third part of the nozzle being less resilient than the first part of the nozzle.

It would have been obvious to one of ordinary skill in the art at the time of the invention to produce the third part of the nozzle of a less resilient material than the first to provide the advantage of a more rigid nozzle outlet in order to provide a more precise atomization since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

18. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Christopher Blizzard /
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771